

Passage of Amended Protocol II

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Introduction

On 24 May 1999, following action by the Senate, President Clinton signed the instruments of ratification for the Amended Mines Protocol II to the Convention on Conventional Weapons (Amended Protocol II).¹ The Senate offered its advice and consent to the United States' ratification, subject to one reservation and several statements of understanding and conditions. Amended Protocol II was promulgated on 3 May 1996 at the Review Conference of the State Parties to the United Nations (UN) Certain Conventional Weapons Convention (UNCCW).² The United States, as a party to UNCCW, participated in the negotiations for Amended Protocol II and was instrumental in ensuring the treaty served the dual purpose of protecting civilians from landmines while providing that U.S. armed forces have the capabilities they need for protection.³ In addition, passage of Amended Protocol II ensured the United States had an active voice in the first annual meeting regarding Amended Protocol II, held 15-17 December 1999.

This article provides a quick reference to practitioners in the field when dealing with mine issues and the impact of Amended Protocol II. It is not intended to provide a comprehensive, article by article analysis of the Protocol, but rather to summarize the key points that the treaty addresses. Current

United States policy on the use of anti-personnel mines is also addressed in Presidential Decision Directives 48, 54, and 64, and from a statement made by President Clinton on 16 May 1996.⁴

Amended Protocol II of the UNCCW

Article 1

Article 1 contains six paragraphs that describe the scope of Amended Protocol II and contains the following significant points

This Protocol shall apply, in addition to situations referred to in Article 1 of this Convention, to situations referred to in Article 3 common to the Geneva Conventions of August 1949.⁵

This paragraph extends the scope of Amended Protocol II to internal armed conflict. The original 1980 Protocol was limited to international armed conflict and certain wars of national liberation.⁶

1. Statement by the Press Secretary, Amended Mines Protocol to the Convention on Conventional Weapons, May 25, 1999, available at <www.pub.whitehouse.gov/uri-res/12R?urn:pdi://oma.eop.gov.us/1999/5/26/2.text.1>. The Amended Mines Protocol II to the Convention on Conventional Weapons is commonly referred to as Amended Protocol II, the Amended Mines Protocol, or the Amended Protocol. This article refers to it as Amended Protocol II.

2. Memorandum, W. Hays Parks, Special Assistant to The Judge Advocate General, Office of the Judge Advocate General, to The Judge Advocate General, subject: Revised Landmine Protocol (6 May 1996).

3. A state is considered a party to the UNCCW if it has ratified two or more of the Protocols at the time it deposits its instruments of ratification. The United States ratified Protocol I (prohibiting nondetectable fragments) and Protocol II (mines). The United States ratified the UNCCW on 24 March 1995, with a reservation to Article 7, paragraph 4. That article applies the UNCCW in wars of self-determination as described in Article 1, para 4 of Protocol I Additional to the Geneva Convention of 1949. Geneva Protocol I expands the definition of international armed conflict to include so called wars against "colonial domination," "alien occupation," and "racist regimes." Protocol I Additional to the Geneva Convention of 1949, Dec. 12 1977, 16 I.L.M. 1391 [hereinafter 1949 Geneva Convention]. The United States objects to expanding the scope of what constitutes international conflict under the UNCCW. The United States believes this expansion politicizes the law of war by injecting a political cause consideration. See generally Michael J. Matheson, Address at the Workshop on International Humanitarian Law (Jan. 22, 1987) (describing the position of the United States on the relation of customary international law to the 1977 additional protocols) (on file with author).

4. Statement by President Clinton at the White House (May 16, 1996) available at LEXIS, News Library, ARCNWS File); Fact Sheet, The White House, Office of the Press Secretary, subject: U.S. Announces Anti-Personnel Landmine Policy (May 16, 1996) available at <<http://www.pub.whitehouse.gov/uri-res/12R?urn:pdi://oma.eop.gov.us/1996/5/16/7.text.1>>. The essence of the policy is that the United States will no longer employ non-self-destructing anti-personnel mines, except for training purposes and on the Korean Peninsula to defend against an armed attack across the de-militarized zone.

5. Protocol on the Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices, amended May 3, 1996, U.S. TREATY DOC. 105-1, at 37, 35 I.L.M. 1206 [hereinafter Amended Protocol II]. Although Amended Protocol II expressly excludes from its scope of applications situations of internal disturbances, such as riots, it does not permit the armed forces of a state or of an insurgent group to ignore its requirements in an armed conflict.

6. Protocol on the Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices, Oct. 10, 1980, 19 I.L.M. 1529, art. I, para. 2 [hereinafter Protocol II]. A highly political and limited list of "Wars of National Liberation" can be found in Article 1(4) of Protocol I Additional to the 1949 Geneva Convention, *supra* note 3.

The change in this obligation is significant for governments and others that might use mines in internal conflicts. It has been in internal armed conflicts (such as Cambodia and Angola) that the greatest number of civilian casualties from mines have occurred.⁷ Extending the coverage of the protections contained in Amended Protocol II to internal armed conflicts was a major objective of the United States in the hope that Amended Protocol II will significantly reduce civilian deaths and injuries from land mines and booby-traps.

Article 2

Article 2 contains fifteen paragraphs, which define the key terms used throughout the protocol. Some of the key terms are: mine, remotely-delivered mine, anti-personnel mine, other devices, and booby-trap.

“Mine” means a munition placed under, on or near the ground or other surface area and designed to be exploded by the presence, proximity or contact of a person or vehicle.⁸

The definition includes both anti-personnel and anti-tank mines. Thus, where reference is made throughout the treaty to “mines” it is understood that such reference applies to both anti-personnel and anti-vehicle mines.⁹

“Remotely-delivered mine” means a mine not directly placed but delivered by artillery missile, rocket, mortar or similar means, or dropped from an aircraft. Mines delivered from a land based system from less than 500 meters are not considered to be “remotely delivered,” provided that they are used in accordance with Article 5 and other relevant Articles of this Protocol.¹⁰

Given the reliance by the U.S. Army on remotely-delivered mines (RDM) (for example the family of scatterable mines (FASCAM)) this definition is of particular importance. Amended Protocol II continued, but improved, the exist-

framework for RDMs. Amended Protocol II recognized their emerging importance and the potential risk these temporary but unmarked minefields may pose to civilians and advancing friendly forces units and personnel.

A significant United States-induced improvement from the original Amended Protocol II is the requirement in Article 6, paragraph 2 of the Amended Protocol II, that all RDMs contain reliable self-destruction or self-deactivation mechanisms, the specifications of which are set forth in paragraph 3 of the Technical Annex. When the original Protocol II was drafted (1978-1980), RDMs were an emerging technology, and governments were unsure whether a self-destructing or self-neutralizing mechanism was preferred. The original Protocol II permitted either. The U.S. experience determined that self-destruction was better (a self-neutralizing mine cannot be distinguished from a live mine, and must be treated and cleared as if it were a live mine). The U.S. RDMs have a highly reliable (99.9%) self-destruction mechanism; should a mine fail to self-destruct, it becomes a non-hazardous dud due to a deactivation mechanism. The U.S. delegation was able to convince other participants that this was the appropriate standard. A similar self-destruction capability is being considered for other U.S. conventional munitions to reduce the risk to civilians and friendly forces from unexploded ordnance.¹¹

Excluded from the definition of RDMs are mines delivered by a ground-based system from less than 500 meters. This exception was developed primarily for the now-discarded British Ranger system, but includes the U.S. Volcano anti-personnel mine system. The Volcano system projects its mines a substantially shorter distance (thirty to fifty meters).¹² These mines were excluded from the definition because they can be delivered in a controlled manner and the resulting field can be marked to warn civilians.¹³

Article 2 also contains the definition of what constitutes an anti-personnel mine.

“Anti-personnel mine” means a mine primarily designed to be exploded by the presence, proximity or contact of a person and that will

7. EXEC. REP. NO. 106-2, at 34 (1999).

8. Amended Protocol II, *supra* note 5, art. 2, para. 1.

9. See EXEC. REP. NO. 106-2, at 36.

10. Amended Protocol II, *supra* note 5, art. 2, para. 2.

11. Electronic Mail from W. Hays Parks, Special Assistant to The Judge Advocate General, Office of The Judge Advocate General, to Major Michael Lacey, subject: Passage of Amended Protocol II (19 Nov. 1999) [hereinafter Parks Correspondence]. Mr. Parks was a member of the U.S. delegation and participated in the negotiations which led to the adoption of Amended Protocol II.

12. The Ranger vehicular mine dispersal system was withdrawn from service except for training purposes when Great Britain became a party to the Ottawa Convention on the Use, Stockpiling, Production, and Transfer of Anti-personnel Mines and on Their Destruction. *Id.*

13. See EXEC. REP. NO. 106-2, at 37.

incapacitate, injure or kill one or more persons.¹⁴

Notice the key words *primarily designed* in the first line of the definition. This element was added to ensure that anti-tank mines that are equipped with anti-handling devices are no included under the definition of anti-personnel mines.¹⁵ This distinction was crucial to the decision by the Senate in its advice and consent to the treaty.¹⁶ Before the proliferation of anti-personnel landmine movements, U.S. Army doctrine was to lay anti-personnel and anti-tank mine fields concurrently so as to thwart any attempt by personnel to clear the anti-tank minefield. The alternative, after the recent anti-personnel landmine backlash, is to equip anti-tank mines with anti-handling devices.¹⁷

The definition of “other devices,” with minor amendment, is a carry-over from the original Mines Protocol:

“Other devices” means manually-emplaced munitions and devices including improvised explosive devices designed to kill, injure, or damage and which are actuated manually, by remote control or automatically after a lapse of time.¹⁸

The intent of this definition is to serve as a “catch-all” for munitions that might not fall under the definitions of “mine,” “anti-personnel mine,” or “booby-trap” to ensure that all such munitions with capabilities similar to anti-personnel mines fall within the rules set forth in Amended Protocol II.¹⁹ An example of an “other munition” is the United States’ M18A1 Claymore mine when used in the command-detonated mode, discussed *infra*.

The 1980 Protocol II maintains the definition of “booby-trap”:

“Booby-trap” means any device or material which is designed, construed, or adapted to

kill or injure, and which functions unexpectedly when a person disturbs or approaches an apparently harmless object or performs a otherwise safe act.²⁰

Article 7 of the Amended Protocol II contains a detailed list of prohibitions on the employment of booby-traps.

Article 3

Article 3 contains eleven paragraphs containing general restrictions on the use of mines, booby-traps, and other devices. It also consists of a number of specific provisions regarding mines, booby-traps, and other devices.

Each High Contracting Party or party to a conflict is, in accordance with the provisions of this Protocol, responsible for all mines, booby-traps, and other devices employed by it and undertakes to clear, remove, destroy or maintain them as specified in Article 10 of this Protocol.²¹

This paragraph clearly places the responsibility to recover all deployed mines on the party that placed them. Article 10 of the Amended Protocol II goes into further detail and establishes a comprehensive set of procedures for fulfilling this responsibility both during and after armed conflict.²²

It is prohibited to use mines, booby-traps, or other devices which employ a mechanism or device specifically designed to detonate the munition by the presence of commonly available mine detectors as a result of their magnetic or other non-contact influence during normal use in detection operations.²³

It is prohibited to use a self-deactivating mine with an anti-handling device that is

14. Amended Protocol II, *supra* note 5, art. 2, para. 3.

15. See EXEC. REP. NO. 106-2, at 37.

16. *Id.*

17. *Id.*

18. Amended Protocol II, *supra* note 5, art. 2, para. 5.

19. See Parks Correspondence, *supra* note 11.

20. See Amended Protocol II, *supra* note 5, art. 2, para. 4.

21. *Id.* art. 3, para. 2.

22. See EXEC. REP. NO. 106-2, at 41.

23. Amended Protocol II, *supra* note 5, art. 3, para. 5.

designed in such a manner that the anti-handling device is capable of functioning after the mine has ceased to be capable of functioning.²⁴

Both paragraphs five and six contain specific provisions designed to ensure the quick, safe removal of minefields after hostilities cease. Paragraph five prohibits the use of any mine designed to detonate by the mere presence of a mine detector that is operated in its designed mode. Currently, no state has admitted to using such a mine, but the ramifications are obvious.

The intent of paragraph six is to avoid situations where a self-deactivating mine, which normally goes “dead” after its battery is exhausted, continues to remain dangerous indefinitely as a result of a long-lived anti-handling device. This would defeat the purpose of the self-deactivation function.²⁵

Other paragraphs in Article 3 of the Amended Protocol II repeat classic law of war legal maxims. Paragraph three prohibits mines or booby-traps which are designed to cause unnecessary suffering.²⁶ This provision is significant because it establishes unequivocally that the delegations to the first review conference did not conclude that mines, booby-traps, and other devices are not, per se, of a nature to cause unnecessary suffering.

Paragraph eight prohibits the indiscriminate use of mines or booby-traps.²⁷ Paragraph nine prohibits treating clearly separated and distinct objectives in a populated area as one single military objective when employing mines or booby-traps.²⁸ Paragraph ten caveats the commander to take all feasible precautions to protect civilians from the effects of mines and booby-traps. Paragraph eleven requires the commander to provide effective warnings to the civilian population about the emplacement of mines, booby-traps, and other devices. Significantly however, paragraph eleven contains the caveat that the warning is only required if circumstances permit.²⁹

24. *Id.* para. 6

25. See EXEC. REP. NO. 106-2, at 42.

26. See Hague Convention No. IV, Respecting the Laws and Customs of War on Land, Oct. 18, 1907, T.S. 539, art 23(e) [hereinafter Hague IV].

27. 1949 Geneva Convention, *supra* note 3, art. 51, para. 4.

28. *Id.* art. 51(5)(a).

29. Amended Protocol II, *supra* note 5, art. 3, para. 11.

30. *Id.* art. 4.

31. EXEC. REP. NO. 106-2, at 29 (1999).

32. Amended Protocol II, *supra* note 5, technical annex, para. 2(a).

33. EXEC. REP. NO. 106-2, at 30.

34. *Id.* at 30.

Article 4

Article 4 contains only one paragraph entirely devoted to prohibiting the use of anti-personnel mines that are not detectable as specified in the Technical Annex.³⁰ The 1980 Protocol II did not prohibit the use of non-detectable mines. As a result, many states have produced, and continue to produce and deploy, large numbers of anti-personnel mines encased in plastic, which prevented their detection by technical means. These mines present a serious threat not only to innocent civilians, but to relief missions and mine-clearing personnel.³¹

The Technical Annex requires that all mines produced after 1 January 1997 have eight grams or more of iron in a single coherent mass.³² Eight grams was determined as the minimum amount of iron necessary to produce a sufficiently strong metallic signature that would enable a mine-detector operator to separate a mine's signature from that of background noise from soil with high-metallic content.³³

Because of the huge stockpiles of mines that do not meet the criteria set out in the Technical Annex, it was necessary to provide parties an option to defer compliance with Article 4 for up to nine years. Amended Protocol II requires any state that defers compliance to declare its intention and, to the extent feasible, minimize the use of anti-personnel mines that do not comply.³⁴

Article 5

Article 5 contains six paragraphs all dealing with the use of anti-personnel mines *other than* remotely-delivered mines. Along with Article 6 (dealing with the restrictions on RDMs), Article 5 represents the very heart of Amended Protocol II. Paragraph two of Article 5 clearly spells out the restrictions:

It is prohibited to use weapons to which this Article applies which are not in compliance

with the provisions on self-destruction in the Technical Annex, unless:

(a) such weapons are placed within the perimeter-marked area which is monitored by military personnel and protected by fencing or other means to ensure the effective exclusion of civilians from the area. The marking must be of a distinct and durable character and must be at least be visible to a person who is about to enter the perimeter-marked area.

(b) such weapons are cleared before the area is abandoned, unless the area is turned over to the forces of another state which accept(s) responsibility or the maintenance of the protection required by this article and the subsequent clearance of those weapons.³⁵

The specifications for the markings of such a perimeter are spelled out in paragraph four of the Technical Annex and are quite detailed and exact. They include such criteria as size and shape, color, appropriate symbol, language, and spacing between the markers.³⁶ The central theme of this article is that the mine-laying party has the responsibility to take positive measures to warn the civilian population and keep them out of such minefields.

The second paragraph deals with the difficult subject of accountability and removal of such mines. Minefields must be recovered before the area is abandoned, unless the area is turned over to a state that accepts responsibility for the required protections and subsequent clearance.³⁷ There was some concern during negotiations over Amended Protocol II that such language could impede any agreements concluded between the parties to a conflict. The record of the negotiations clearly demonstrates that the paragraph does not preclude agreements between the parties to a conflict that adhere to the essential spirit and purpose of the article.³⁸

Paragraph 3 provides a narrow exception to the above requirements:

A party to a conflict is relieved from further compliance with the provisions of sub-paragraphs 2(a) and 2(b) of this article only if

such compliance is not feasible due to forcible loss of control of the area as a result of military action, including situations where direct military action makes it impossible to comply. If a party regains control of the area, it shall resume compliance with the provisions of sub-paragraphs 2(a) and 2(b) of this article.³⁹

The exception in the paragraph is spelled out in clear and unequivocal language. Note that military necessity alone is not enough to invoke the exception, but rather the “loss of control of the area as a result of military action.” Paragraph 4 requires a party that has gained control of terrain in which landmines are already laid to implement the protections provided in paragraphs two (a) and (b). Paragraph 5 requires the parties to take all feasible measures to prevent the unauthorized removal, defacement, destruction or concealment of the markings of the perimeter.

Paragraph six is of special significance to operational law practitioners:

Weapons to which this Article applies which propel fragments in a horizontal arc of less than 90 degrees and which are placed on or above the ground may be used without the measures provided for in sub-paragraph 2(a) of this Article for a maximum period of 72 hours if:

(a) they are located in immediate proximity to the military unit that emplaced them; and

(b) the area is monitored by military personnel to ensure the effective exclusion of civilians.⁴⁰

This is the Claymore exception to the Amended Protocol II. The U.S. M18A1 Claymore mine is a directional fixed fragmentation mine primarily for anti-personnel use, and is also effective against thin-skinned vehicles. Detonation of the high explosive charge causes fragmentation outward of the plastic matrix and projection of the spherical fragments outward in a fan-shaped pattern. The M18A1 mine delivers 700 highly effective steel fragments in a fan-shaped pattern approximately two meters high and sixty degrees wide at a range of fifty

35. Amended Protocol II, *supra* note 5, art. 5, para. 2.

36. *Id.* technical annex, para. 4.

37. EXEC. REP. NO. 106-2, at 31.

38. *Id.*

39. Amended Protocol II, *supra* note 5, art. 5, para. 4

40. *Id.* para 6.

meters. These fragments are effective up to a range of 100 meters forward of the mine.⁴¹

The paragraph effectively exempts out the M18A1 Claymore, in tripwire mode, from the onerous marking requirements in paragraph two (a), provided the following criteria are met:

- (1) The mine is emplaced for no longer than 72 hours.
- (2) The mine is located in the immediate proximity to the military unit that emplaced it.
- (3) The area the mine is located in is monitored by military personnel to ensure the effective exclusion of civilians.⁴²

If any of the above criteria are not met, the marking, fencing, and monitoring requirements of paragraph two (a) of Article 5 are invoked.

The term “effective exclusion of civilians” should not be construed as placing impractical burdens upon the unit that emplaced the mine. This requirement is satisfied if the unit keeps overview of the various avenues of approach into the kill zone of the Claymore.⁴³

It is important to note that the command detonated Claymore *does not* fall into the definition of “anti-personnel mines” and is therefore not covered under Article 5.

Article 6

Article 6 contains four paragraphs that deal with restrictions on the use of RDMs.

It is prohibited to use remotely-delivered mines unless they are recorded in accordance with sub-paragraph 1(b) of the Technical Annex.⁴⁴

The requirements for marking RDMs in the Technical Annex are not overly burdensome.

The estimated location and area of remotely-delivered mines shall be specified by the coordinates of reference points (normally corner points) and shall be ascertained and when feasible marked on the ground at the earliest opportunity. The total number and type of mines laid, the date and time of laying and the self-destruction time periods shall also be recorded.⁴⁵

In most circumstances, an eight-digit grid coordinate marking the four corners of the projected minefield, should meet the recording requirements of Amended Protocol II. Article 6 also requires that copies of the above data be held at a level of command sufficient to guarantee their safety.⁴⁶

As previously noted, paragraph two bans the use of remotely-delivered *anti-personnel mines* that do not possess the self-destruction and self-deactivation parameters of the Technical Annex. This is the compliment to the Article 5 provision concerning “dumb” non-remotely delivered anti-personnel mines. Together the two, in effect, prohibit the use of all long-lived (non-self-destructing or self-deactivating) anti-personnel mines outside of marked, monitored, and protected areas.⁴⁷

Paragraph 3 of Article 6 seeks to extend the prohibition to include “dumb” anti-tank mines. The paragraph prohibits the use of such mines, “unless to the extent feasible, they are equipped with an effective self-destruction or self-neutralization mechanism and have a back-up self-deactivation feature . . .”⁴⁸ Interestingly, during the negotiations for the Amended Protocol II, the United States was in favor of requiring that all remotely-delivered anti-tank mines have the self-destruct mechanisms. However, many other delegates were opposed to any regulation of anti-tank mines—hence the language *to the extent feasible*.

41. See generally U.S. DEP'T OF ARMY, FIELD MANUAL 23-23, ANTIPERSONNEL MINE M18A1 AND M18 (CLAYMORE) (6 Jan. 1966). The Amended Mines Protocol's acknowledgement of the legality of the Claymore also served to reconfirm the legality of the combat shotgun. See W. Hays Parks, *Joint Service Combat Shotgun Program*, ARMY LAW., Oct. 1997, at 16-24.

42. Amended Protocol II, *supra* note 5, art. 5, para 6

43. EXEC. REP. NO. 106-2, at 33.

44. Amended Protocol II, *supra* note 5, art. 6, para. 1.

45. *Id.* technical annex, para. 1(b).

46. *Id.* technical annex, para. 1(c).

47. EXEC. REP. NO. 106-2, at 33.

48. Amended Protocol II, *supra* note 5, art. 6, para. 3.

Paragraph 4 requires effective advance warning to the civilian population of any delivery or dropping of remotely-delivered mines—unless circumstances do not permit.⁴⁹

The warning is similar in nature to the requirements to warn stated in Hague IV, Article 26⁵⁰ and Protocol I, Article 57(2)(c).⁵¹ One would presume that a similar analysis would result when the practitioner was considering the employment of remotely-delivered mines. Namely, if the mines have the potential to affect the civilian population (such as delivery into a heavily populated area), a warning should be issued, unless surprise or other military necessities make the warning impractical.

Article 7

Article 7 repeats restrictions contained in the original mines protocol for the emplacement or use of booby-traps, extending them to other devices.

Without prejudice to the rules of international law applicable in armed conflict relating to treachery and perfidy, it is prohibited in all circumstances to use booby-traps and other devices which in any way attached or associated with:

- (a) internationally recognized protective emblems, signs or signals;
- (b) sick, wounded or dead persons;
- (c) burial or cremation sites or graves;
- (d) medical facilities, medical equipment medical supplies or transportation;
- (e) children's toys or other portable objects or products specifically designed for the feeding, health, hygiene, clothing, or education of children;
- (f) food or drink;

(g) kitchen utensils or appliances except in military establishments;

(h) objects clearly of a religious nature;

(i) historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples;

(j) animals or their carcases.⁵²

The above list is a “laundry list” for the operational attorney to use when analyzing the legality of the use of a booby-trap or other device. There is one important caveat to the above list. Sub-paragraph 1(f) of Article 7 prohibits the use of booby-traps against “food or drink.” Food and drink are not defined under the protocol, and if interpreted broadly, could include such viable military targets as supply depots and logistical caches.⁵³ Consequently, it was imperative to implement a reservation to Amended Protocol II that recognized that such legitimate military targets as supply depots and logistical caches were permissible targets against which to employ booby-traps. The reservation clarifies that stocks of food and drink, if judged by the United States to be of potential military utility, will not be accorded special or protected status.⁵⁴

Paragraph 2 prohibits the mass production of an apparently harmless object that is specifically designed to be a booby-trap. This does not prohibit the expedient adaptation of objects for use as booby-traps to slow an enemy advance.⁵⁵

Paragraph 3 prohibits the use of booby-traps in any concentration of civilians, where combat between ground forces is not taking place or does not appear imminent. There are two exceptions given to the general rule: (1) booby-traps may still be placed on or in the close vicinity of a military objective, (2) measures are taken to protect civilians from the effects of the booby-trap.⁵⁶

Articles 8

Article 8 addresses the transfer of mines—a higher echelon issue that the operational law practitioner is unlikely to encoun-

49. *Id.* para. 4.

50. Hague IV, *supra* note 26.

51. 1949 Geneva Convention, *supra* note 3, art. 57, para. 2(c).

52. Amended Protocol II, *supra* note 5, art. 7, para. 1.

53. EXEC. REP. NO. 106-2, at 35 (1999).

54. *Id.*

55. *Id.* at 36.

56. Amended Protocol II, *supra* note 5, art. 7, para. 3.

ter. The article prohibits the transfer of all mines the use of which is prohibited by Amended Protocol II; for example, anti-personnel mines that do not meet the detectability standards of the Technical Annex, remotely-delivered anti-personnel mines that do not have a self-destruct or self-neutralization feature in accordance with the Technical Annex, and all mines that are specifically designed to be detonated by the presence of common mine detectors.⁵⁷

Article 9

Article 9 consists of three paragraphs and addresses the crucial issue of the recording and subsequent use of information on minefields, mined areas, mines, booby-traps, and other devices. Paragraph 1 lays the foundation:

All information concerning minefields, mined areas, mines, booby-traps and other devices shall be recorded in accordance with the provisions of the Technical Annex.⁵⁸

The Technical Annex provides comprehensive treatment on recording requirements for both other than remotely-delivered mines and for remotely-delivered mines.

Recording of the location of *mines other than remotely-delivered mines*, minefields, mined areas, booby-traps, and other devices shall be carried out in accordance with the following provisions:

(i) the location of the minefields, mined area, and areas of booby traps and other devices shall be specified accurately by relation to the coordinates of at least two reference points and the estimated dimensions of the area containing these weapons in relation to those reference points;

(ii) maps, diagrams or other records shall be made in such a way as to indicate the location of minefields, mined areas, booby-traps and other devices in relation to reference points, and these records shall also indicate their perimeters and extent; and

(iii) for purposes of detection and clearance of mines, booby-traps, and other devices, maps, diagrams or other records shall contain complete information on the type, number, emplacing method, type of fuse and life time, date and time of laying, anti-handling devices (if any) and other relevant information on all these weapons laid. Whenever feasible the minefield record shall show the exact location of every mine, except in row minefields where the row location is sufficient. The precise location and operating mechanism of each booby-trap laid shall be individually recorded.⁵⁹

The requirements for marking remotely-delivered minefields are found in paragraph one (b) of the Technical Annex and were discussed above under Article 7.

Paragraph two of Article 9 requires the parties to the conflict to retain all records concerning such minefields and to take all necessary measures to protect civilians from the effects of such areas after the cessation of hostilities.⁶⁰ The same paragraph requires the parties to share such information with the other parties to the conflict as well as with the Secretary-General of the UN—but only after cessation of hostilities.⁶¹

Articles 10

Article 10 consists of four paragraphs and describes the responsibilities of the parties to a conflict for removal of mines and clearance of minefields. The first paragraph lays the groundwork:

Without delay after the cessation of active hostilities, all minefields, mined areas, booby-traps, and other devices shall be cleared, removed, destroyed or maintained in accordance with Article 3 and paragraph 2 of Article 5 of this Protocol.⁶²

Other paragraphs in the article describe aspirational goals of international cooperation between the belligerent parties and international organizations on technical and material assistance concerning the clearance of active minefields.

57. EXEC. REP. NO. 106-2, at 37.

58. Amended Protocol II, *supra* note 5, art. 9, para. 1.

59. *Id.* technical annex, para. 1(a).

60. *Id.* art. 9, para. 2.

61. *Id.* para. 2.

62. *Id.* art. 10, para. 1.

Articles 11 through 14 describe higher echelon mine issues that, although important, the operational law practitioner is unlikely to encounter. Article 11 describes technological cooperation and assistance each nation shall endeavor to furnish to each high contracting party and to the UN database on mine clearance systems.⁶³ Article 12 requires each high contracting party to the conflict to provide extensive information concerning minefields to (1) any UN force performing peace-keeping, observation or similar function in accordance with the Charter of the UN; (2) any humanitarian and fact-finding mission of the UN system; (3) missions of the International Committee of the Red Cross; and (4) other humanitarian missions and missions of enquiry.⁶⁴ Article 13 discusses consultation of the high parties and mechanisms, such as annual conferences, to ensure the continual updating of Amended Protocol II.⁶⁵ Article 14 discusses the compliance of the parties and requires each high contracting party to take appropriate steps to prevent and suppress violations of Amended Protocol II.⁶⁶

Non-Lethal Weapons

Non-lethal weapons were an emerging concept at the time Amended Protocol II was negotiated, and were not a topic of discussion during the review conference. The crucial issue addressed by Amended Protocol II was the indiscriminate effect of irresponsible use of conventional anti-personnel mines. However, non-lethal weapons are designed specifically for the purpose of minimizing fatalities, permanent injury to personnel, and undesired damage to property and the environ-

ment.⁶⁷ Therefore, the United States' ratification of Amended Protocol II contained a statement of understanding that it does not consider Amended Protocol II to be relevant to non-lethal devices designed to temporarily incapacitate or otherwise affect a person, but not to cause permanent incapacity.⁶⁸ Recent reviews by the International and Operational Law Division of the Office of The Judge Advocate General of non-lethal weapons incorporate this understanding.⁶⁹

Conclusion

The Amended Mines Protocol II to the Certain Conventional Weapons Convention represents a significant improvement over the original Protocol II, particularly in the areas of recording and marking of minefields, the scope of application of the treaty, and the new restrictions on the use of remotely-delivered mines. Although the practitioner must remember that current U.S. policy concerning non-self-destructing anti-personnel mines renders some articles of Amended Protocol II moot many of the articles still have full application. Amended Protocol II is also a valuable resource for use in defining such terms of art as anti-personnel mine, booby-trap, military objective, and remotely-delivered mine. Given the continuing international effort to ban all anti-personnel landmines, it is important that judge advocates can clearly articulate the many positive steps the United States has taken to lessen the impact of landmines. Amended Protocol II is one of the most significant of these steps. The treaty also stands as a clear rebuttal to those in the international community who accuse the United States of inactivity on the issue of landmines.

63. *See id.* art. 11.

64. *See id.* art. 12.

65. *See id.* art. 13.

66. *See id.* art. 14.

67. U.S. DEP'T OF DEFENSE, DIR. 3000.3, POLICY FOR NON-LETHAL WEAPONS, para. C (9 July 1996).

68. EXEC. REP. NO. 106-2 (1999).

69. *See* Memorandum, International and Operational Law Division, Office of The Judge Advocate General to The Judge Advocate General, subject: Cannister Launched Area Denial System (CLADS) (6 July 1999)